to disregard notice of the equitable mortgage of shares in the defendant company made by Lam, the registered holder, in favour of the plaintiff, and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

I accordingly declare that by virtue of the deposit of the certificates of 450 shares with the plaintiff by Lam, the plaintiff was an equitable mortgagee of the shares. I also declare that as regards the certificate of 225 shares deposited with the plaintiff on the 2nd February, 1957, the plaintiff's equitable mortgage ranked in priority to the defendant's lien in respect of Lam's debt under his guarantee of the 4th November, 1959, and any other debt incurred by Lam after the notice of the 2nd February, 1957. I order the defendant to account for the proceeds of sale of the 225 shares and bonus shares and dividends relating thereto. I order that an account be taken of what is due to the plaintiff for principal and interest on the equitable mortgage. And I order the defendant to pay the plaintiff the costs of this action.

Order accordingly.

Solicitors: *R. C. H. Lim & Co.; Rodyk & Davidson.*

FLINTER v. IDRIS

[O.C.J. (Winslow J.) April 17, 1965]

[Singapore — Suit No. 516 of 1964]

Bill of sale — Registration — Want of — Ownership in car transferred to nominee.

Conversion — Registered owner of car — Car transferred under moneylending transaction — Registration with registrar of vehicle — Title.

In 1961 the plaintiff through the good offices of one *C* obtained $4,000 from *K* Company which the plaintiff thought was a loan to be repaid with interest over the next 12 months. The plaintiff signed certain documents most of which were blank and got his assistant, the defendant also to execute certain documents transferring the plaintiff's car to the defendant as his nominee as security for the loan. The plaintiff sued the defendant for damages for conversion of the car by the defendant in 1964 to his own use.

Held: (1) the document of sale of the plaintiff's car to the company was not registered as a bill of sale and was accordingly unenforceable under the Bills of Sale Ordinance. The car accordingly remained the property of the plaintiff throughout;

(2) the defendant became the registered owner under a moneylending transaction which the *K* Company was not licensed to transact and which was therefore clearly illegal. Registration with the registrar of vehicles does not confer absolute ownership and cannot create an indefeasible title in the defendant.

Cases referred to:—

(1) *Gladys Nugawela* v. *Soon Teck Finance Co.* [1960] M.L.J. 302.

(2) *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C.

(3) *Sajan Singh* v. *Sardara Ali* [1960] M.L.J. 52, P.C.

CIVIL SUIT.

D. G. Ironside for the plaintiff.

Dennis Lee for the respondent.

Cur. Adv. Vult.

Winslow J.: In this case the plaintiff, Dr. Jack Flinter, was, in early 1961, desperately in need of a sum of $4,000. Through the good offices of one Joseph Chee, apparently a ship's chandler, he obtained $4,000 from Messrs. Kian Ann Co. Ltd. (hereinafter called "the company") which he thought was a loan to be repaid with interest over the next 12 months. He says he signed documents most of which were blank except for certain printed words of no great significance and got his assistant, a dresser, the defendant, also to execute a document or documents which the plaintiff took to be documents of transfer of his own car No. SU. 63 into the defendant's name as his nominee. The plaintiff denied that he knew anything about the nature of any of the documents involved in the transaction save that he admitted knowing that he was obtaining the loan in question against the security of his car which the lender had asked him to transfer to the defendant as his nominee. He denied selling or purporting to sell the car outright to the lender as the car was then worth very much more than $4,000. In fact he signed blank documents almost blindly in his desperation to raise $4,000, trusting implicitly in Mr. Joseph Chee's recommendation of the company as a lender.

It may be difficult to imagine that a professional man like the plaintiiff could have been so naive as to do all the various things he says he did without being conscious of the nature of the transaction to which he was becoming a party. A borrower ordinarily signs an I.O.U. or a promissory note. If he signs anything else and knows that he is being asked to pledge his car to the lender as security one would expect him to take the elementary precaution of consulting not a ship's chandler but a lawyer.

It never occurred to him to express any surprise at what he says he was being asked to do viz. to transfer his car to someone else of his own choice. Now, a person transferring a car to another should know whether or not he is signing a document of transfer of some kind but the plaintiff says that he did not know what he was signing as the documents were more or less in blank as to the essential details nor, was he in the least concerned, as a result of his anxiety to obtain the loan of $4,000, about the nature of the documents he was signing.

It is immaterial for the purposes of this case, I think, for me to decide whether he knew or did not know the actual nature of the documents he signed or what they were intended to represent, whatever he thought they did. The document of sale of his car to the company was not registered as a bill of sale which it actually was and it was accordingly unenforceable by the latter under the Bills of Sale Ordinance (Cap. 22). The car accordingly remained the property of the plaintiff throughout and could never, if necessary, have been properly seized by the company (vide *Gladys Nugawela* v. *Soon Teck Finance Co.*[1])

The plaintiff in this action, however, is not seeking restitution or damages in respect of conversion on seizure or sale by the company. What he seeks is damages for conversion of the car by the defendant in 1964 to the defendant's own use. The defendant was the plaintiff's nominee in 1961 and became the registered owner according to the records of the registrar of vehicles on the day on which the car was "sold" to the company in what was actually a money-lending transaction which the latter was not licensed to transact and which was therefore clearly illegal. Registration with the registrar does not of course, confer absolute ownership and cannot create an indefeasible title in the defendant.

I hold therefore that the transaction vested no title to the car in the defendant at any time and that the car remained in the ownership of the plaintiff at all material times. This follows from the fact that the original purported sale by the plaintiff was void because of non-compliance with the Bills of Sale Ordinance.

I do not think that the cases relating to illegal contracts cited by both counsel culminating in the illuminating decision in *Palaniappa Chettiar* v. *Arunasalam Chettiar* [2] have any relevance to the present action. In those cases the object behind the transactions in question was to circumvent or defeat the law or to practise deceit on the public administration. The object or motive on the part of the plaintiff was primarily to obtain a loan. Moreover this is not an action in contract as between the plaintiff and the defendant because as between them there never was any contract. It is an action for conversion and it follows that this case must be decided in accordance with the principle laid down in *Sajan Singh* v. *Sardara Ali.*[3]

That case however decided (*per* Lord Denning) —

"There are cases which show that when two persons agree together in a conspiracy to effect a fraudulent or illegal purpose — and one of them transfers property to the other in pursuance of the conspiracy — then, so soon as the contract is executed and the fraudulent or illegal purpose is achieved, the property (be it absolute or special) which has been transferred by the one to the other remains vested in the transferee, notwithstanding its illegal origin, see *Scarfe* v. *Morgan, per* Parke B. The reason is because the transferor, having fully achieved his unworthy end, cannot be allowed to turn round and repudiate the means by which he did it — he cannot throw over the transfer. And the transferee, having got the property, can assert his title to it against all the world, not because he has any merit of his own, but because there is no one who can assert a better title to it".

The facts in the present action can be disguished. There was no contract between the plaintiff and the defendant. Whatever contract there was existed only between the plaintiff and the company and the defendant was only the plaintiff's nominee in the hire purchase agreement between the company and the defendant. The sale to the company was void and passed no property to the latter and the latter could therefore pass no title to the defendant. The plaintiff had no "unworthy end" to achieve even though he allowed himself to get involved in this transaction in the way in which he did. If anyone had an unworthy end it was the company and not the plaintiff. In order to circumvent the law the company required a transfer of the car to the defendant because if it had remained in the name of the plaintiff they would have been unable to seize it because of the *Nugawela case* above. Moreover there never was any transfer of the car from the plaintiff to the defendant for any fraudulent or illegal purpose. The plaintiff wanted a loan and that is all there was to it. I am not concerned with any breaches of the law he may have committed unwittingly by being a party to this transaction in the manner it was transacted by an unscrupulous financier. In short, no contract was executed between the plaintiff and the defendant and no transfer between them took place for any unworthy end. My decision would have been different had there been any question of the parties being the company on the one hand and the plaintiff and the defendant on the other. That however is clearly not the position.

It seems to me that the plaintiff succeeds in this case without having to refer to or having to rely or depend on the transaction in question. He was the owner of the car which he bought in 1960. That car remained in his possession until its conversion in 1964 by the defendant.

The plaintiff does not and does not have to found his cause of action on the illegality of the transaction in question. It is the defendant who raises this in his defence and says that the property lies where it falls as a result of the illegal transaction i.e. in himself. If he relies on this proposition it is pertinent to point out that the property never in fact passed to him at all as a result of this transaction but remained in the plaintiff throughout.

Judgment will accordingly be entered for the plaintiff as claimed with costs.

Judgment for the plaintiff.

Solicitors: *D. G. Ironside; Lee & Lee.*

M. S. ALLY & CO. LTD. v. CALHAEM

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 3, 1964]

[K.L. — Federal Court Civil Appeal No. 34 of 1964]

Damages — Wrongful attachment — Whether person wrongfully attached could claim damages.

In this appeal the Federal Court reversed the judgment in *Calhaem* v. *M. S. Ally & Co. Ltd.* [1964] M.L.J. 289 and allowed the appeal with costs on the ground that the statement of claim was bad and disclosed no cause of action.

Editorial Note: The Honourable Lord President delivered an oral judgment and we have been informed by his Lordship's secretary that there was no recorded judgment. We understand from counsel for the appellant that the following authorities and cases were cited in argument:— (1) *Sarkar's* Code of Civil Procedure (8th Edition) Vol. 1; (2) *Halsbury* (3rd Edition) Vol. 38 p. 574; (3) *Halsbury* (3rd Edition) Vol. 2 p. 166; (4) *Blay* v. *Pollard* [1930] 1 K.B. 634; (5) *Churchill* v. *Siggers* 118 E.R. 1389; (6) *De Medina* v. *Grove* 116 E.R. 67; (7) *Davies* v. *Jenkins* 152 E.R. 1005; (8) *Phillips* v. *General Omnibus Co.* (1880) 50 L.J.Q.B. 112; (9) *Huffer* v. *Allen* (1866) 15 L.T. 225; L.R. (1866) 2 Exch. 15; (10) *Kepong Prospecting Co. Ltd.* v. *Schmidt* [1962] M.L.J. 375; (11) *Manjappa Chettiar* v. *Ganapathi* I.L.R. 35 Mad. 589; (12) *Clissold* v. *Cratchley* [1910] 2 K.B. 244; (13) *Foley* v. *Hill* (1848) 2 H.L.C. 28; (14) *Joachinson* v. *Swiss Bank* [1921] 3 K.B. 110; (15) *Re Thynne* [1911] 1 Ch. 282; (16) *Marshall* v. *James* [1905] 1 Ch. 432.

FEDERAL COURT.

Peter Mooney for the appellants.

A. D. Rajah for the respondent.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

YEOW FOOK YUEN & ANOR. v. REGINA

[A.Cr.J. (Wee Chong Jin C.J.) November 25, 1964]

[Singapore — Magistrate's Appeal No. 43 of 1963]

Penal Code, ss 24, 109, 406 and 408 — Misappropriation of union funds — Acted "dishonestly" — What amounts to — Abetment — Criminal breach of trust.

Criminal Procedure — Charge — Alteration — Recall of witness — Criminal Procedure Code (Cap. 132), s. 160.

The first appellant, the honorary treasurer of a trade union was charged with two charges of wilfully suffering the second appellant, the general-secretary of the union, to dishonestly misappropriate two sums amounting to $7,500 from the funds of the union contrary to section 406 of the Penal Code. The 2nd appellant was charged with abetment of the offence contrary to sections 109 and 406 of the Penal Code. The main defence of both appellants was that the sum of $7,500 was taken by the 2nd appellant by way of loan or loans from time to time, and that although these loans were taken without prior approval, they were approved by the executive council of the union at a later date.

After the prosecution had closed its case the trial judge, having formed the view that both appellants had a case to answer on criminal breach of trust simpliciter and abetment thereof on the ground that the 1st appellant was not a servant in the employ of the union and therefore not a servant within the meaning of section 408 of the Penal Code, amended the charges against the appellants who then claimed trial on the amended charges. Before the trial judge called upon the appellants to enter upon their defence, counsel for the appellants applied to recall the main prosecution witness and his purpose for so doing was "to show that this witness has been coached. He has motive to implicate the second accused". The application was disallowed on the ground that it was not consequential upon and had no reference to the charges as amended and therefore he could not recall the witness for that purpose at that stage but could do so later when the two appellants made their defence.

Held: (1) on the facts before the district court there was ample evidence to support a finding that both appellants acted "dishonestly" within the meaning of section 24 of the Penal Code;

(2) the trial judge was right in rejecting the application to recall the witness as the appellants had no absolute right under section 160 of the Criminal Procedure Code to recall and examine a witness where the purpose of that application had no reference to the altered charges;

(3) the trial judge was correct in rejecting the defence contention that the approval given by the executive council subsequent to the taking of the money and at a time when the police were already investigating the matter afforded a complete defence in law in respect of the charges;

(4) taking all the factors and the observations of the trial judge into consideration, the sentences of both appellants should be varied from imprisonment to a fine on each charge.

Cases referred to:—

(1) *Nagendra Nath Sen* v. *Emperor* A.I.R. 1932 Cal. 486.

(2) *Ong Boon Siang & Ors.* v. *Regina* [1961] M.L.J. 4.

MAGISTRATE'S CRIMINAL APPEAL.

T. T. Rajah for the appellants.

Francis T. Seow (Senior Crown Counsel) for the respondents.

Wee Chong Jin C.J.: The first appellant is appealing against his conviction by the First Criminal District Judge on the following two charges:—

First Charge:

"You, Yeow Fook Yuen, the Honorary Treasurer of the Singapore Harbour Board Staff Association, Old Clubhouse, Cantonment Road, Singapore, are charged that you, between the 28th day of February, 1961 and the 30th day of December, 1961, at Singapore, being the Treasurer of the aforesaid Singapore Harbour Board Staff Association, and in such capacity entrusted with dominion over property, to wit, the aforesaid Singapore Harbour Board Staff Association funds, wilfully suffered one Jamit Singh, the General-Secretary of the aforesaid Singapore Harbour Board Staff Association, to dishonestly misappropriate the sum of Dollars Three Thousand and five hundred ($3,500) from the aforesaid funds and you have thereby committed an offence